

a review of all applications under the criteria set forth in §118.11 and any public comments submitted under §118.2 or this section, shall determine whether a CES operator should be selected and, if a CES operator is to be selected, shall select the applicant that will best meet the examination needs of Customs and facilitate the movement of merchandise.

[T.D. 93-6, 58 FR 5604, Jan. 22, 1993, as amended by T.D. 99-64, 64 FR 43266, Aug. 10, 1999]

§118.13 Notification of selection or nonselection.

The applicant selected to operate a CES will be notified in writing by the port director of his tentative selection. The selection shall become final upon execution of the written agreement between Customs and the applicant under §118.3 of this part, and the port director will advise the public of the final selection and of the date on which the CES will commence operation under the agreement in accordance with the notice procedures set forth in §118.2 of this part. Each applicant not selected to be a CES operator will be so notified in writing and with a statement of the reason of nonselection.

Subpart C—Termination of a CES

§ 118.21 Temporary suspension; permanent revocation of selection and cancellation of agreement to operate a CES.

The port director may immediately suspend or propose permanent revocation and cancellation of CES operations for cause as provided in this section.

(a) *Immediate suspension.* The port director may immediately suspend, for a temporary period of time or until revocation and cancellation proceedings are concluded pursuant to §118.23, a CES operator's or entity's selection and the written agreement to operate the CES if:

(1) The selection and written agreement were obtained through fraud or the misstatement of a material fact; or

(2) The CES operator or an officer of a corporation which is a CES operator or a person the port director determines is exercising substantial ownership or control over such operator or

officer is indicted for, convicted of, or has committed acts, which would constitute a felony, or a misdemeanor involving theft or a theft-connected crime. In the absence of an indictment or conviction, the port director must have probable cause to believe the proscribed acts occurred.

(b) *Proposed revocation and cancellation.* The port director may propose to revoke the selection as operator and cancel the agreement to operate a CES if:

(1) The CES operator refuses or otherwise fails to follow any proper order of a Customs officer or any Customs order, rule, or regulation relative to the operation of a CES, or fails to operate in accordance with the terms of his agreement or to comply with any of the provisions of §118.4 of this part;

(2) The CES operator fails to retain merchandise which has been designated for examination;

(3) The CES operator does not provide secure facilities or properly safeguard merchandise within the CES;

(4) The CES operator fails to furnish a current list of names, addresses and other information required by §118.4 of this part; or

(5) The custodial bond required by §118.4 of this part is determined to be insufficient in amount or lacking sufficient sureties, and a satisfactory new bond with good and sufficient sureties is not furnished within a reasonable time.

(6) The CES operator or an officer of a corporation which is a CES operator or a person the port director determines is exercising substantial ownership or control over such operator or officer is indicted for, convicted of, or has committed acts, which would constitute any of the offenses listed under paragraph (a) of this section. Where adverse action is initiated by the port director pursuant to paragraph (a) of this section and continued under this paragraph, the suspension of CES activities remains in effect through the appeal procedures provided under §118.23.

(c) *Circumstance of change in employment not a bar to adverse action.* Any change in the employment status of a